IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 17215 of 2007(Y)

PETITIONER:

P.P.SASIDHARAN NAIR, PORUTTOOR HOUSE,
CHIRAKKADAVU, KOTTAYAM DISTRICT.

BY ADV. SRI.TITUS MANI,
SRI.S.SURAJ (PALATHANATHU).

RESPONDENT:

THE DHANALAKSHMI BANK LTD.,
CHIRAKKADAVU BRANCH, PONKUNNAM, KOTTAYAM,
REPRESENTED BY THE BRANCH MANAGER.

BY ADV. SRI.C.K.KARUNAKARAN,SC,DHANALAKSHMI BANK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.17215 OF 2007

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Dated this the 6th day of June, 2007

JUDGMENT

The writ petition is filed seeking to quash Ext.P5 order dated 20.3.2007 passed by the Munsiff's Court, Kanjirappaly. The suit O.S.No.323 of 2005 was admittedly decreed as per the terms of the compromise. As per the decree the plaintiff is allowed to realise an amount of Rs.50,000/- from the defendant and his assets. A time limit of six months is allowed for payment and in case of default, it is to be realised from the defendant thereafter. The defendant did not make the payment. So the decree holder moved E.P.No.18 of 2007 for execution of the decree. The writ petitioner contended that the decree is unexecutable and the court is bound to grant instalment facility to the judgment debtor to pay off the debt at the rate of Rs.1,000/- per month. Both these contentions did not find favour with the executing court and therefore it dismissed that application. It is against that decision the present petition is filed.

2. Learned counsel for the petitioner strongly contends before me that the decree is unexecutable as it is barred by limitation. It has to be stated

that the suit was decreed on the basis of a compromise or a confession made by the defendant and if at all any plea of limitation is raised in the written statement by virtue of the compromise or confession the said contention automatically ceased to exist and therefore it was on that basis the court has passed the decree. It is too late for the present defendant to come and contest that the suit is barred by limitation. Further, when a suit is decreed on the basis of a compromise the only possible method to attack the compromise decree is to challenge the decree on the ground of fraud. It is not done and there is no such contention and no suit is filed. Again a reference to section 47 of the Code of Civil Procedure would go to show that the executing court is not competent to enter into a finding which has become final by virtue of the decree passed by the court and it can only find the matters enunciated in Section 47 C.P.C. So on these grounds, the first contention is liable to be rejected.

3. The next contention raised by the counsel is that the executing court committed a mistake by not granting instalment facility. Under Order XX Rule 11 (2) after the passing of any such decree the court may, on the application of the judgment debtor and with the consent of the decree holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest,

etc.. So Order XX Rule 11(2) envisages a situation at the stage of execution. Now after the decree the executing court is not vested with the power of granting any instalment facility. What the executing court can do is only to execute the decree. It is not a statutory right vested upon the judgment debtor to get the instalment facility and it is only a discretion that has to be exercised by the court after hearing the decree holder. In this case the decree holder has not consented for such a course. The court has granted six months' time for payment.

Therefore the order passed by the learned Munsiff is perfectly in order and I do not find any ground to interfere with the said decision. Therefore there is no merit in the writ petition. Hence the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-